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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/529,702	07/11/2006	Muriel Morelli	J&J-5133	2082

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EXAMINER

WESTERBERG, NISSA M

ART UNIT	PAPER NUMBER
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1618

NOTIFICATION DATE	DELIVERY MODE
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04/29/2010

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary	Application No. 10/529,702	Applicant(s) MORELLI ET AL.	
	Examiner Nissa M. Westerberg	Art Unit 1618	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 March 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3 and 6-8 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 6-8 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Applicants' arguments, filed March 2, 2010, have been fully considered but they are not deemed to be fully persuasive. The following rejections and/or objections constitute the complete set presently being applied to the instant application.

2. The originally filed claims did not contain a claim 7, an omission which has been corrected and as such, the numbering of the claims has been adjusted. The new claim numbers are used in the rejection statements made below.

Election/Restrictions

3. The requirement is still deemed proper and is therefore made FINAL.

Claim Rejections - 35 USC § 112 – 2nd Paragraph

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claim 6 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 6 requires a particular chemical formula for the electrolyte which is present but claim 1 indicates that multiple electrolytes can be

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present ("at least one electrolyte"). It is unclear if 0.5 wt% total electrolytes, at least one being according to formula I of claim 6, must be present or if at least 0.5 wt% of the electrolyte of formula I must be present, regardless of any other electrolytes which may be present. Please clarify.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

8. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was

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not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

9. Claims 1 – 3 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chevalier et al. (US 2003/0007985) in view of Guerrero et al. (US 5,425,939). This rejection is MAINTAINED for the reasons of record set forth in the Office Action mailed December 2, 2009 and those set forth below.

Applicant traverses this rejection on the grounds that there is no teaching or suggestion in Chevalier to incorporate sclerotium gum or at least 0.5% of triethanolamine. Guerrero et al. is relied upon the Examiner for the teaching of the use of sclerotium gum in combination with a hydrophobically-modified (meth)acrylate polymer to form to effective thickening systems in cosmetic compositions. Guerrero et al. discloses that many thickeners, not all of which are equally effective, are known and that electrolytes adversely affect anionic polymeric thickening agents. Two elements are critical to the thickener in Guerrero – sclerotium gum and the modified (meth)acrylate polymer. There is no teaching or suggestion that sclerotium gum in combination with PVM/MA decadiene crosspolymer would be an effective thickening agent. Guerrero et al. also does not teach or suggest at least 0.5% triethanolamine.

These arguments are unpersuasive. The instant claims do not exclude the presence of a hydrophobically modified (meth)acrylate polymer that Guerrero et al. teaches as being part of an effective thickening system in compositions that also

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contain electrolytes. It would have been obvious to include the 2-part thickening system of Guerrero et al. as the hydrophilic gelling agent in the compositions of Chevalier et al. in order to provide the effective thickening in the presence of electrolytes and to also include PVM/MA as the lipophilic gelling agent as the compositions of Chevalier et al. use multiple thickening agent.

Guerrero et al. discloses that the compositions can contain water-soluble vitamins that function as electrolytes (col 1, ln 25 - 27), which as discussed can adversely affect thickening of compositions. The total amount of vitamins present in the compositions ranges from about 0.001 to about 1%, or preferably from 0.01 to 0.6% (col 3, ln 47 - 49). Chevalier et al. discloses that active including the vitamins C, A, B3, B5 and E can be included as active in the compositions (¶¶ [0056] – [0057]). It would have been obvious to one of ordinary skill in the art to include these vitamins as active agents in the composition of Chevalier, which would then require the use of thickening system described by Guerrero to produce a thick final composition. The amounts of the water soluble vitamins that can function as electrolytes taught by Guerrero et al. overlap with the range recited in the instant, which are *prima facie* obvious (MPEP 2144.05).

For this rejection, claim 6 is being interpreted as requiring the presence of triethanolamine with the concentration of at the least electrolyte being about 0.5%, and is not being interpreted as requiring 0.5% of the ethanolamine derivative electrolyte.

The types of compositions prepared in Chevalier are oil in water emulsions, which contain an aqueous carrier as required by the amended claims.

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10. Claims 1 – 3 and 6 – 8 were rejected under 35 U.S.C. 103(a) as being unpatentable over Chevalier et al. and Guerrero et al. further in view of Perricone (US 5,554,647) and Ozlen (US 5,441,740). This rejection is MAINTAINED for the reasons of record set forth in the Office Action mailed December 2, 2009 and those set forth herein.

Applicant traverses this rejection on the grounds discussed above in regards to Chevalier et al. and Guerrero. Perricone and Ozlen fail to cure these deficiencies as there is no teaching or suggestion to increase the triethanolamine amount to at least 0.5% or to incorporate sclerotium gum into the anti-aging serum of Chevalier et al.

These arguments are unpersuasive. Perricone discloses the DMAE as an ingredient for the acetylcholine precursor and acetyl choline precursors are present in an amount of at least about 0.25%, more preferable at least about 1% and most preferably at least 5% by weight (col 5, ln 39 – 44). Claim 6 recites a generic formula that encompasses both triethanolamine and DMAE - none of the claims require that triethanolamine be present at 0.5%. As discussed in greater detail above, the combination of Chevalier and Guerrero teach the inclusion of sclerotium gum in the composition.

Conclusion

11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

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§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nissa M. Westerberg whose telephone number is (571)270-3532. The examiner can normally be reached on M - F, 8:00 a.m. - 4 p.m. ET.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael G. Hartley can be reached on (571) 272-0616. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Jake M. Vu/
Primary Examiner, Art Unit 1618

NMW